

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5801 of 1996

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

SURESHBHAI THAKORBHAI VASAVA

Versus

DISTRICT MAGISTRATE

Appearance:

Mr. H. R. Prajapati for MR VIJAY H PATEL for Petitioner
Mr. Nigam Shukla, learned Addl. P.P. for the
respondent Nos.1 to 3 and 5.
Mr. Sunil C. Patel, learned Addl. Standing Counsel
for respondent No.4.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 03/10/96

ORAL JUDGMENT ;

1. Petitioner-detenu seeks to challenge the detention order dated 28-6-96 passed against him by the District Magistrate, Kheda under the provisions of Blackmarketing and Maintenance of Supply of Essential Commodities Act, 1980, which will be hereinafter referred

to as "1980 Act". The grounds of detention dated 28-6-96 were enclosed with the detention order and the same was executed on the very day and thus the petitioner is under detention since 28-6-96.

2. The petitioner-detenu had a licence to run the Fair Price Shop and he was found to be engaged in the misuse of this licence by selling out essential commodities viz. 2 barrels containing 880 litres of kerosene were sold out by him in an unauthorised manner at much higher rate than the rate prescribed at Fair Price Shop and thereby the bonafide consumers holding cards of entitlement were deprived of this essential commodity and the petitioner detenu made gains for himself. The petitioner's activities were detected on 21-6-96 and on that basis the Panchanamas were prepared. On the basis of the material made available before the detaining authority i.e. District Magistrate, Kheda, the detaining authority came to the conclusion that the petitioner was required to be detained and accordingly the detention order was passed under the provisions contained in S.3 of the 1980 Act. This order passed by the District Magistrate, Kheda was later on confirmed on the opinion rendered by the Advisory Board under S.10 of the 1980 Act.

3. This petition was filed on 3-8-96 and Rule was issued by this Court on 7-8-96. The period of detention is six months, more than 50% of the period of detention has already expired. No para-wise reply on behalf of the respondents has been filed. Only one affidavit-in-reply dated 4-9-96 has been filed by Mr.K.S. Vaghela, Under Secretary to the Government, Food and Civil Supplies Department. Sachivalaya, Gandhinagar.

4. The detention order has been challenged on grounds more than one, but after hearing the learned counsel I find that this petition can be decided on the sole ground that the petitioner's representation dated 25-7-96 has remained unattended and fate of the representation is not known. The learned counsel for the petitioner has submitted that the representation dated 25-7-96 was addressed to the Addl. Chief Secretary, Food and Civil Supplies Department, through the respondent No.3 i.e. Superintendent of Jail, Rajkot Central Prison, Rajkot. The Addl. Chief Secretary, Food and Civil Supplies Department, Gandhinagar was one of the authorities mentioned at item No.2 in the end of the grounds for detention as an authority to whom the representation could be made. The averments made by the petitioner in this regard, as contained in para 5 of the

petition, have not been controverted in the affidavit-in-reply dated 4-9-96 filed under the signatures of Under Secretary to the Government, Food and Civil Supplies Department, Gandhinagar and thus the affidavit-in-reply is conspicuously silent about anything with regard to the petitioner's representation. However, Mr. Nigam Shukla, appearing on behalf of the respondent Nos.1,2,3 and 5, has submitted that the record, which is available with him, shows that this representation dated 25-7-96, made by the petitioner through Jail Authorities and addressed to the Addl. Chief Secretary, Food and Civil Supplies Department, Gandhinagar, was sent by the Jail Authorities on 26-7-96, but the same was received by the District Magistrate i.e. detaining authority on 27-7-96 and the District Magistrate i.e. the detaining authority in turn sent para-wise remarks to the Addl. Chief Secretary, Food and Civil Supplies Department, Gandhinagar on 2-8-96 and, thereafter, what has happened to this representation is not known and thus the Addl. P.P. Mr. Shukla, appearing on behalf of the respondent Nos.1,2,3 and 5 has pleaded complete ignorance about the fate of this representation after 2-8-96 while the matter is being heard today on 3-10-96. Thus there is no explanation, either written or oral, for the period from 2-8-96 till this date i.e. 3-10-96 i.e. for a period of nearly two months. Thus it is clearly established on the facts of this case that the petitioner's right of representation under Article 22(5) of the Constitution of India has been violated and the petitioner's detention can not be allowed to continue. The representations against the detention order are required to be attended and decided with utmost care but the respondents have miserably failed to consider the petitioner's representation and only a scant regard has been shown even in the matter of informing the Court as to what has been the fate of this representation after 2-8-96.

5. In the backdrop of the aforesaid factual position and the consequential violation of petitioner's right under Article 22(5) of the Constitution of India, this Special Civil Application deserves to be allowed and the same is hereby allowed. The petitioner's continued detention is declared to be illegal and the detention order dated 28-6-96 passed by District Magistrate, Kheda is hereby quashed and set aside. The petitioner shall be released forthwith from the Baroda Central Prison, Baroda, where he is stated to be presently lodged, if not required in any other case. Rule is made absolute.

